Case: 4:19-cv-03236-MTS Doc. #: 28 Filed: 02/20/25 Page: 1 of 2 PageID #: 77

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

D.D. CARTER-BOYER,)	
Plaintiff,)	
VS.)	Case No. 4:19-cv-03236-MTS
UNITED STATES OF AMERICA,)	
Defendant.)	

MEMORANDUM OPINION

The Court previously dismissed this action without prejudice when Plaintiff failed to respond to Defendant's Motion to Dismiss and subsequently failed to show cause for that failure to respond. *See* Doc. [22]. Plaintiff then filed a Motion for Reconsideration. Doc. [23]. The Court granted the Motion and provided Plaintiff another thirty days to respond to Defendant's Motion. Doc. [24]; *see also Boyko v. Anderson*, 185 F.3d 672, 673–74 (7th Cir. 1999) (explaining that "the grant of [a] Rule 60(b) motion operates to vacate the original judgment"). Plaintiff then sought an additional forty-five days to respond, Doc. [25], which the Court provided, Doc. [27]. The Court admonished that if Plaintiff failed to respond within that time, the Court would dismiss the action with prejudice. *Id.* More than thirty-eight months have now passed, but Plaintiff has filed nothing.

Consistent with the Court's previous Order, the Court will dismiss this action for Plaintiff's failure to oppose Defendant's Motion to Dismiss. *See Farraj v. Cunningham*, 659 F. App'x 925, 927 (9th Cir. 2016) (mem.) (affirming the district court's dismissal of

plaintiff's complaint "based on his failure to oppose the motions to dismiss"). In addition, dismissal is appropriate for Plaintiff's failure to comply with the Court's Order to respond to the Motion, Doc. [27], and failure to prosecute this action in the months since then. *See Hutchins v. A.G. Edwards & Sons, Inc.*, 116 F.3d 1256, 1259 (8th Cir. 1997) ("A district court has the power to dismiss a litigant's cause of action when the litigant fails to comply with the court's orders."); *see also* Fed. R. Civ. P. 41(b) (allowing for dismissal based on a plaintiff's failure to prosecute).

An Order of Dismissal will be entered herewith that will dismiss this action with prejudice.

Dated this 20th day of February 2025.

MA/TTHEW T. SCHELP

UNITED STATES DISTRICT JUDGE